

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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COSTELLA ADAMS-TERRELL,

Plaintiff-Appellee,

v

MICHAEL DAVID BLAIR,

Defendant-Appellant.

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UNPUBLISHED

November 13, 2003

No. 238578

Wayne Circuit Court

LC No. 01-115478-AA

Before: Whitbeck, C.J., and Zahra and Donofrio, JJ.

PER CURIAM.

Defendant appeals by leave granted a circuit court order setting aside case evaluation sanctions that were awarded to him against plaintiff by the district court. We reverse.

This case originally began in the circuit court. After a case evaluation, the case was transferred to the district court.<sup>1</sup> The order transferring the case provided, in pertinent part:

THE COURT after . . . having determined that it lacks jurisdiction over the subject matter of the action following Plaintiff's stipulation to limit her damages to Twenty Five Thousand Dollars (\$25,000) . . .

\* \* \*

IT IS HEREBY FURTHER ORDERED AND ADJUDGED the Plaintiff's potential recovery in this matter is limited to TWENTY FIVE THOUSAND DOLLARS (\$25,000).

\* \* \*

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<sup>1</sup> MCR 2.227(A)(1) provides, in pertinent part:

(1) When the court in which a civil action is pending determines that it lacks jurisdiction of the subject matter of the action, but that some other Michigan court would have jurisdiction of the action, the court may order the action transferred to the other court in a place where venue would be proper.

IT IS HEREBY ORDERED AND ADJUDGED that this matter will be transferred to the 36th District Court pursuant to MCR 2.227.

\* \* \*

IT IS HEREBY FURTHER ORDERED that the Plaintiff shall not be required to pay compensation to the defendant for expenses or attorney fees in this matter before any court. . . .

After the case was transferred, the district court granted defendant's motion for summary disposition and plaintiff's action was dismissed. Defendant then filed a motion in the district court for case evaluation sanctions. In response to the motion, plaintiff argued that defendant's motion was improper because the transfer order reflected the parties' agreement to limit defendant's right to recover costs or attorney fees in exchange for the jurisdictional limitation of damages in the district court. Defendant disavowed the agreement. The district court awarded defendant case evaluation sanctions because it was not willing to interpret the circuit court order to exclude mediation sanctions in the absence of a written agreement. The district court stayed the entry of its order for thirty days to allow plaintiff time to appeal to the circuit court.

Plaintiff timely filed her claim of appeal. Plaintiff moved to permanently stay the proceedings. A hearing was held and the circuit court granted plaintiff's motion. During the hearing, plaintiff argued that given the posture of the case, no bond was necessary. The circuit court apparently agreed, but ordered that a nominal bond of \$200 be filed. After the hearing, defendant filed a motion in the district court to dismiss plaintiff's appeal because plaintiff failed to secure the transcript or file a cost or stay bond. The district court granted defendant's motion.

After the district court dismissed plaintiff's appeal, the circuit court held a hearing on plaintiff's motion to set aside the district court order of case evaluation sanctions. During the hearing, the circuit court was informed that the district court had dismissed plaintiff's appeal, and that plaintiff had appealed that decision to the circuit court. The circuit court, without addressing whether it had jurisdiction, set aside the order for case evaluation sanctions. The circuit court essentially adopted plaintiff's position that the transfer order limited defendant's right to recover case evaluation sanctions.

On appeal, defendant argues that once the district court dismissed plaintiff's appeal under MCR 7.101(G), the circuit court lacked appellate jurisdiction to set aside the district court's award of case evaluation sanctions. Subject matter jurisdiction is a question of law that this Court reviews de novo. *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 472; 628 NW2d 577 (2001).

A district court may dismiss an appeal to circuit court under MCR 7.101(G), which provides:

(G) If an appellant does not comply with subrule (C)(2) or (F)(1), the appeal may be considered abandoned, and the trial court may dismiss the appeal on 7 days' notice to the parties, unless the trial court or circuit court has granted a motion for further time. The trial court clerk must promptly notify the circuit court of a dismissal, and the circuit court shall dismiss the claim of appeal.

Compliance with subrule (F)(1) after the 28-day period does not preclude dismissal of the appeal unless the appellant shows a reasonable excuse for the late compliance.

Defendant argues that dismissal was warranted because plaintiff failed to file a cost bond or a stay bond. MCR 7.101(C)(2)(b), provides that at the time a claim of appeal is filed, the appellant *must* do the following:

(b) File in the trial court a bond for costs on appeal unless the appellant has filed a stay bond that includes security for costs or unless the appellant is exempt or excused from filing a bond or bond is waived under MCR 3.604(L). This subrule does not, however, apply to civil infraction actions, criminal cases, or summary proceedings for the possession of premises.

(i) The bond must be in the amount of \$200, unless the trial court sets another amount.

(ii) The bond must have at least one surety, unless the court excuses this requirement under MCR 3.604(L).

(iii) The bond must be on the condition that the appellant will pay the costs under subrule (O) and the damages under subrule (P) awarded on appeal.

Stay bonds are governed by MCR 7.101(H)(1)(b), which provides in pertinent part:

(b) An appeal does not stay execution unless

(i) the appellant files a stay bond to the opposing party as provided by this rule or by law; or

(ii) the appellant is exempted by law from filing a bond or is excused from filing a bond under MCL 600.2605 or MCR 3.604(L) and the trial court grants a stay on motion.

(c) The stay bond must be set by the trial court in an amount adequate to protect the opposing party. If the appeal is by a person against whom a money judgment has been entered, it must be not less than 1 1/4 times the amount of the judgment.

\* \* \*

(d) Unless otherwise provided in this rule, the filing of a bond stays all further proceedings in the trial court under the order or judgment appealed from. If an execution has issued, it is suspended by giving notice of the bond to the officer holding the execution.

Here, plaintiff did not file a cost bond or a stay bond in the district court despite the circuit court's caution to do so. Further, no exceptions to filing a cost bond or stay bond have been shown. Thus, plaintiff failed to comply with MCR 7.101, and the district court did not abuse its discretion in granting defendant's motion to dismiss plaintiff's appeal.

In light of our conclusion that the district court properly dismissed plaintiff's appeal, defendant's remaining issues need not be addressed.

Reversed. We do not retain jurisdiction.

/s/ William C. Whitbeck

/s/ Brian K. Zahra

/s/ Pat M. Donofrio